

Nonreimbursable Space Act Agreement

between the

National Aeronautics and Space Administration

and

SkyCorp Incorporated

1. AUTHORITY

This agreement is entered into by the National Aeronautics and Space Administration (NASA) pursuant to 42 U.S.C. §2.473(c)(5) and (6), and §203(c) of the National Aeronautics...and Space Act of 1958, as amended, and SkyCorp Incorporated, a Delaware corporation (SkyCorp).

2. PURPOSE

The National Aeronautics and Space Administration, by virtue of the National Aeronautics and Space Act of 1958, is directed to conduct its activities so as to contribute to the preservation of the role of the United States as a leader in aeronautical and space science and technology and their applications. Moreover, the Act charges NASA with the responsibility "to seek encourage to the maximum extent possible the fullest commercial use of space."

NASA goals include facilitating the use of space for U.S. commercial products and services. A critical element is to provide flight opportunities to help evaluate the commercial potential, and to reduce the cost of exploring high-risk activities. Specifically, flight satellites (payload) packaged within International Space Station mid-deck lockers is sought to verify and validate a satellite assembly method that may have significant commercial implications. In summary, the assembly of modular satellite parts in orbit eliminates the need of much of the structural support for the satellite, reducing the weight of the satellites and thus manufacturing and launch costs.

SkyCorp specializes in technology applications in the areas of small satellites, general research, and communications. SkyCorp is seeking to enter into an agreement with NASA to demonstrate this assembly method.

3. PURPOSE AND AGENCY COMMITMENT

The purpose of the Agreement is to provide for the flight of modular parts for one small experimental communications satellite. The parts will be assembled aboard the space Shuttle or the International Space Station (ISS) by crewmembers and released into low earth orbit for testing and evaluation by SkyCorp. The launch, on orbit assembly, and the deployment to orbit of the SkyCorp small satellite will be conducted as a Space Station Detailed Test Objective (SSDTS). The required technical specifications, design and operational plan shall be evaluated and approved by the required ISS and Shuttle control boards in accordance with the ISS Change Request stand process in SSP 50448 (draft).

SkyCorp flight hardware must be certified for flight in accordance with SSP 50448 and SSDTO processes in order to qualify for a flight opportunity. Non-certified equipment shall not qualify for a launch opportunity. Failure to be certified and approved for flight shall be grounds for unilateral NASA termination of this Agreement.

This Agreement provides, subject to approval by NASA, one flight opportunity onboard the ISS via the Space Shuttle for a package consisting of up to three mid-deck lockers, containing the parts for one small satellite provided by SkyCorp. The weight of all three units totals less than 150 pounds. The total on orbit astronaut work-hours necessary to assemble and deploy the satellite shall not exceed 4 hours.

If the flight of this satellite validates SkyCorp design expectations, it is the intention of SkyCorp to further explore the commercial assembly and deployment of a large number of such satellites on board the U.S. section of the International Space Station. Upon the conclusion of the DTO activities a review of the results will be conducted to determine the technical success and lessons learned. SkyCorp may at that time go forward with a second phase activity. This second phase activity shall be in accordance with the ISS Commercial Development Plan and pricing policies. This Agreement shall not obligate NASA to any follow-on flights.

4. RESPONSIBILITIES

SkyCorp Responsibilities

SkyCorp, a U.S. company, is the owner of all aspects of the payload and associated hardware. SkyCorp is fully responsible for the fabrication and appropriate testing of the flight, qualification, and training hardware, the preparation of all necessary documentation to meet NASA integration and safety review requirements, and the timely delivery of the package to, and retrieval from, locations to be jointly agreed upon for pre-and post-flight activities.

This arrangement is dependent upon the timely delivery by SkyCorp of the necessary materials describing the flight, qualification and training hardware and the submission of appropriate testing, operation, and safety documentation and approval of NASA. SkyCorp will be subject to NASA written policies with respect to access to and use of NASA or NASA contractor property to the extent not expressly and specifically addressed in this Agreement.

In return for the flight opportunity, SkyCorp will transfer ownership to NASA of one functional SkyCorp small satellite configured identically to the flight unit to be flown pursuant to this Agreement except for payloads provided by SkyCorp's customers.

As additional-consideration for NASA's commitment of substantial resources to the success of this project, SkyCorp agrees to the following: assembly/manufacturing in space of all future satellites using the SkyCorp parts, patents, and processes will take place on the U.S. portion of

the Space Station, pursuant to reimbursable agreement(s) with NASA or a NASA-related entity that may operate the U.S. portion of the Space Station. However, if NASA or its assignee of this agreement is unable to deliver the services in the timely manner required for the manufacture/ assembly of the satellites due to technical, programmatic, budgetary, or policy limitations, SkyCorp may contract for needed services from one or more of the other ISS International partners or their assignees.

NASA Responsibilities:

NASA will use reasonable efforts to provide the flight opportunity to SkyCorp, for which SkyCorp shall pay NASA the sum of \$2,000,000.00. NASA and NASA-controlled property or services made available for use by SkyCorp under this Agreement are made available to the extent such use is consistent with United States laws, regulations, policies, or obligations. NASA will make efforts, in the event of a non-nominal in cabin test of the satellite or support equipment, to return equipment to KSC for SkyCorp retrieval. NASA does not agree to any effort for Extra "Vehicular retrieval once the satellite has entered the depress phase of deployment from the ISS or Shuttle.

NASA shall have the authority to require that any SkyCorp activity conducted pursuant to this Agreement which interferes with other activities at any Government-owned, NASA-controlled facility or which otherwise poses a hazard to property or personnel be promptly ended or corrected by SkyCorp. NASA shall have the right to bump a payload if, in NASA's judgement, the payload would adversely affect the planned objectives of the Shuttle flight or ISS increment activities. NASA shall have the right to delay a flight to any extent necessary for Shuttle, payload, or mission requirements, or: for any other reasons which, in NASA's judgement, are sufficient to justify a delay.

5. SCHEDULE AND MILESTONES

The scheduled activities will be dependent upon each flight opportunity identified, and will be defined by NASA as soon as reasonable, as a function of SkyCorp payload availability to launch.

6. FINANCIAL OBLIGATIONS

Except for the payment by SkyCorp to NASA of a \$2,000,000.00 fee for the flight opportunity, to be paid according to the schedule set forth below, there will be no transfer of funds between NASA and SkyCorp in connection with this Agreement. Each party will fully fund its own participation.

Schedule of Payments from SkyCorp to NASA

\$100,000.00 within 30 days of the signing of this Agreement

\$250,000.00 within 30 days of successful flight readiness review and delivery of hardware

\$1,650,000.00 balance due upon deployment of the satellite

SkyCorp shall be fully responsible for all of its costs associated with flight equipment, payload integration, including the fabrication and appropriate testing of flight, training, and qualification hardware, and the timely preparation of all necessary documentation to meet NASA integration and safety review requirements, and the delivery of the package to, and retrieval from, locations to be jointly agreed upon for pre- and post-flight activities.

NASA's funding of its obligations is subject to NASA's physical, personnel, and budget resource availability, as determined by NASA.

7. PRIORITY OF USE

In the event that other NASA priorities or interests arise that cause a conflict in scheduling or allocation of NASA resources, NASA, in its sole discretion, may determine which usage takes priority. In such event, NASA shall make an effort to provide reasonable notice of that change so that the schedule and milestones of this activity may be adjusted or terminated accordingly.

8. NONEXCLUSIVITY

This agreement is not exclusive; accordingly, NASA may enter into similar agreements for the same or similar purpose with other U.S. private or public entities.

9. LIABILITY AND RISK OF LOSS CROSS WAIVER

a. Purpose. The objective of this article is to establish a cross-waiver of liability by the parties and related entities in the interest of encouraging participation in the exploration, exploitation, and use of outer space through the International Space Station (hereinafter Space Station). This cross-waiver of liability shall be broadly construed to achieve this objective.

b. Definitions. For the purpose of this article:

(1) The term "damage" means:

- (a) bodily injury to, or other impairment of health of, or death of, any person
- (b) damage to, loss of, or loss of use of any property
- (c) loss of revenue or profits
- (d) other direct, indirect, or consequential damage

(2) The term "launch vehicle" means an object (or any part thereof) intended for launch, launched from Earth, or returning to Earth which carries payloads or persons, or both.

(3) "Liability" shall include payments made pursuant to United States treaty, any judgement by a court of competent jurisdiction, administrative and litigation costs, and, after consultation with the other party, settlement payment.

(4) A "Partner State" means each contracting party for which the Agreement Among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the

United States of America Concerning Cooperation on the Civil International Space Station (signed January 29, 1998; hereinafter the "Intergovernmental Agreement"), has entered into force or become operative (pursuant to Articles 25 and 26, respectively, of the Intergovernmental Agreement). A Partner State includes its Cooperating Agency. It also includes the National Space Development Agency of Japan.

(5) The term "Party" means a party to this agreement.

(6) The term "payload" means all property to be flown or used on or in a launch vehicle or the Space Station.

(7) The term "Protected Space Operations" means all launch vehicle activities, Space Station activities, and payload activities on Earth, in outer space, or in transit between Earth and outer space done in implementation of the Space Station Agreements. It includes, but is not limited to the following:

(a) Research, design, development, test, manufacture, assembly, integration, operation, or use of launch or transfer vehicles, the Space Station, or a payload, as well as related support equipment, and facilities and services. This includes but is not limited to the assembly, testing, launching from the Shuttle, and operation of the satellites that is the subject of this agreement.

(b) All activities related to ground support, test, training, simulation, or guidance and control equipment, and related facilities or services.

"Protected Space Operations" excludes activities on Earth which are conducted on return from space or from the Space Station to develop further a payload's product or process for use other than for Space Station-related activities in implementation of the Space Station agreements.

(8) The term "related entity" means:

(a) a contractor or subcontractor of a Party or a Partner State at any tier

(b) a user or customer of a Party or a Partner State at any tier, including but not limited to any user of the satellite that is the subject of this agreement.

(c) a contractor or subcontractor of a user or customer of a Party or a Partner State at any tier.

The term "related entity" may also apply to another State, or an agency or institution of a State, having the same relationship to a Partner State as described in subparagraphs 8(a) through 8(c) above, or otherwise engaged in Protected Space Operations as defined in subparagraph 9.b.(7) above. The terms "contractors" and "subcontractors" include suppliers of any kind.

c. Cross-waiver of Liability:

(1) Each party agrees to a cross-waiver of liability pursuant to which each party waives all claims against any of the entities or persons listed in subparagraphs c(1)(a) through c(1)(d) below based on damage arising out of Protected Space Operations. This cross-waiver shall apply only if the person, entity, or property causing the damage is involved in Protected Space Operations and the person, entity, or property is damaged by virtue of its involvement in Protected Space Operations. The cross-waiver shall apply to any claims for damage, whatever the legal basis for such claims, against the following:

- (a) Another party;
- (b) a Partner State other than the United States of America;
- (c) a related entity of any entity identified in subparagraphs c. (1)(a) or c.(1)(b) above
- (d) the employees of any entity identified in subparagraphs c.(1)(a) through c.(1)(c) above

(2) In addition, each party shall, by contract or otherwise, extend the cross-waiver of liability as set forth in subparagraphs c.(1) above to its related entities by requiring them to:

- (a) Waive all claims against the entities or persons identified in subparagraphs c.(1)(a) through c.(1)(d) above; and
- (b) Require that their related entities waive all claims against the entities or persons identified in subparagraphs c.(1)(a) through c.(1)(d) above.

(3) For avoidance of doubt, this cross-waiver of liability includes a cross-waiver of liability arising from the Convention on International Liability for Damage Caused by Space Objects (which entered into force on September 1, 1972), where the person, entity, or property causing the damage is involved in Protected Space Operations, and the person, entity, or property damaged is damaged by virtue of its involvement in Protected Space Operations.

(4) Notwithstanding the other provisions of this agreement, this cross-waiver of liability shall not be applicable to the following:

- (a) Claims between a Party, its related entity, or between its own related entities;
- (b) Claims made by a natural person, his/her estate, survivors, or subrogees for bodily injury, other impairment to health, or death of such natural person, except where the subrogee is a party to this agreement or has otherwise agreed to be bound by the promises of this cross-waiver;
- (c) Claims for damage caused by willful misconduct;

(d) Intellectual property claims, or

(e) Claims for damage resulting from a failure of a Party to extend the cross-waiver of liability to its related entities, pursuant to c.(2) above.

(5) Nothing in this article shall be construed to create the basis for a claim or suit where none would otherwise exist

Indemnification and Insurance for Third party Liability

SkyCorp further agrees to indemnify and hold U.S. Government, its related entities and their respective employees harmless from any claim made third-parties (defined for purposes of this paragraph as entities not covered by the cross-waiver provisions of this agreement) for damage or loss arising out of the performance of this agreement, including improper assembly or manufacture of the satellites. For these purposes, SkyCorp agrees to obtain adequate insurance which protects the U.S. Government, its related entities, and their respective employees as beneficiaries of such insurance. A copy of the insurance policy shall be made available to NASA for its review and approval, upon request.

10. INTELLECTUAL PROPERTY

Patent and Invention Rights:

(a) Definitions: The term "Spacecraft Assembly Technology," as used in this agreement, means the technology included in the design, transport and construction or assembly of spacecraft by humans or robots in space including, but not limited to, the invention described in U.S. Patent Application No.: 5,271,582 and any resulting or follow-on U.S. or foreign patents issuing thereon.

(b) Title to inventions conceived as a consequence of, or in direct relation to, the performance of activities under this agreement will remain with the respective inventing parties (SkyCorp or NASA), and no patent or invention rights are exchanged between or granted by such parties under this agreement except as provided herein.

(1) SkyCorp Inventions: SkyCorp will use reasonable efforts to report inventions made by SkyCorp employees as a consequence of, or that bear a direct relation to, the performance of specified SkyCorp activities under this agreement.

(2) NASA Inventions: NASA will use reasonable efforts to report inventions made by NASA employees as a consequence of, or that bear a direct relation to, the performance of specified NASA activities under this agreement. Upon request, NASA will use reasonable efforts to grant to SkyCorp, in accordance with requirements of 37 CFR Part 404, an exclusive or partially exclusive, revocable, royalty-free license, on terms to be subsequently negotiated to any

NASA invention that may be made under the agreement and on which NASA decides to file a patent application.

(3) NASA Contractor Inventions: In the event NASA contractors are asked to perform work in support of specified NASA activities under this agreement and inventions are made by contractor employees or jointly between NASA employees and contractor employees, and NASA has the right to acquire or has acquired title to such inventions" NASA will use reasonable efforts to report such inventions. Upon request, NASA will use reasonable efforts to grant to SkyCorp, in accordance with the requirements of 37 C.F.R. Part 404, an exclusive or partially exclusive, revocable, royalty-free license, on terms to be subsequently negotiated to any NASA invention that may be made under the agreement and on which NASA decides to file a patent application. This license will be subject to the rights reserved in paragraph (c)(2), below.

(4) Joint Inventions with SkyCorp: NASA and SkyCorp agree to use reasonable efforts to identify and report to each other, and to cooperate with each other in obtaining patent protection or any inventions made jointly between NASA employees (or employees of NASA contractors if NASA has the right to acquire title) and employees of SkyCorp. Upon timely request, NASA will use reasonable efforts to grant to SkyCorp, in accordance with the requirements of 37 C.F.R. Part 404, an exclusive or partially exclusive, revocable, royalty-free license, on terms to be subsequently negotiated. Any such license would be subject to the applicable rights reserved in paragraph (c), below.

(c) Rights to be Reserved in SkyCorp's License: Any license granted to SkyCorp pursuant to paragraphs (b)(2)-(4) above will be subject to the reservation of the following rights:

(1) As to inventions made solely by, or jointly with, NASA employees, the irrevocable, worldwide, royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) As to inventions made solely by, or jointly with, employees of NASA contractors, the rights in the Government of the United States as set forth in (1) above, as well as the revocable, nonexclusive, royalty-free license in the contractor as set forth in 14 C.F.R. §1245.108

(d) Protection of Reported Inventions: When inventions are reported and disclosed between the parties in accordance with the provisions of this clause, the receiving party agrees to withhold such reports or disclosures from public access for a reasonable time (presumed to be 1 year unless otherwise mutually agreed) in order to facilitate the allocation and establishment of the invention and patent rights under these provisions.

(e) Patent Filing Responsibilities and Costs: The invention and patent rights set forth herein shall apply to any patent application filed and patents obtained in any country, and each party is responsible for its own costs of preparing, prosecuting, issuing, and maintaining patents covering sole inventions in any country; except NASA and SkyCorp may, upon the reporting of any invention (sole or joint) or in any license granted, mutually agree otherwise for any country as to patent application preparation, filing and prosecution responsibilities and costs, and maintenance responsibilities and costs.

Data Rights:

(a) Definitions: The term "data," used herein, means recorded information, regardless of form, the media on which it may be recorded, or the method of recording. The term includes, but is not limited to, data of a scientific or technical nature, computer software and documentation thereof, and data comprising commercial and financial information.

(b) General: Data exchanged between NASA and SkyCorp under this agreement will be exchanged without restriction as to its disclosure, use, or duplication except as otherwise marked or as otherwise provided below in this provision. No preexisting proprietary data will be provided to SkyCorp under this agreement unless specifically authorized, in writing, by the owner of the proprietary data.

(c) Background Data: In the event it is necessary for SkyCorp to furnish NASA with data that existed prior to, or was produced outside of, this agreement, and such data embodies trade secrets or comprises commercial or financial information that is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) only for the purposes of this Agreement.

(d) Data Produced by SkyCorp under this Agreement: In the event data first produced by SkyCorp in carrying out SkyCorp's responsibilities under this agreement is furnished to NASA, and SkyCorp considers such data to embody trade secrets or to comprise commercial or financial information that is privileged or confidential, and such data is so identified with a suitable notice or legend, the data will be maintained in confidence and disclosed and used by NASA and its contractors (under suitable protective conditions) for evaluation, research, and development purposes by or on behalf of the Government, only for purposes of this Agreement.

(e) Data First Produced by NASA: As to data first produced by NASA in carrying out NASA's responsibilities under this agreement and which data would embody trade secrets or would comprise commercial or financial information that is privileged or confidential if it had been obtained from SkyCorp, such data will, to the extent permitted by law, be appropriately marked with a notice or legend and maintained in confidence for a period of 5 years after development of

the information, with the express understanding that, during the aforesaid period, such data may be disclosed and used by NASA and its contractors (under suitable protective conditions) by or on behalf of the Government for Government purposes only, and thereafter for any purpose whatsoever without restriction on disclosure and use. SkyCorp agrees not to disclose such data to any third party without NASA's written approval until the aforementioned restricted period expires.

(f) Data Disclosing an Invention. In the event data exchanged between NASA and SkyCorp discloses an invention for which patent protection is being considered, the disclosure and use of such data is not otherwise limited or restricted herein, and the furnishing party specifically identifies such data, the receiving party agrees to withhold such data from public disclosure for a reasonable time (presumed to be 1 year unless mutually agreed otherwise) in order for patent protection to be obtained.

(g) Copyright. In the event data is exchanged with a notice indicating that the data is protected under copyright, such data will be presumed to be published and the following paid-up licenses shall apply:

(1) If it is indicated on the data that the data existed prior to, or was produced outside of, this agreement, the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for the purpose of carrying out the receiving party's responsibilities under this Agreement.

(2) If the furnished data does not contain the indication of (1) above, it will be assumed that the data was first produced under this agreement, and the receiving party and others acting on its behalf, may reproduce, distribute, and prepare derivative works for any of its own purposes.

(h) Oral and visual information. If information that SkyCorp considers to embody trade secrets or to comprise commercial or financial information which is privileged or confidential is disclosed orally or visually to NASA, such information must be reduced to tangible, recorded form (i.e. converted into data as defined herein), identified and marked with a suitable notice or legend as required by paragraphs (c) and (d) above, and furnished to NASA within 10 days after such oral or visual disclosure, or NASA shall have no duty to limit or restrict, and shall not incur any liability for any disclosure and use of such information.

(i) Disclaimer of Liability. Notwithstanding the above, NASA shall not be restricted in, nor incur any liability for, the disclosure and use of the following:

(1) Data not identified with a suitable notice or legend as set forth in paragraphs (c) and (d); nor

(2) Information contained in any data for which disclosure and use is restricted under paragraphs (c), (d), and (e) above, if such information is or becomes generally known without breach of the above, is known to or is generated by NASA independently of carrying out

responsibilities under this agreement, is rightfully received from a third party without restriction, or is included in data which SkyCorp has, or is required to furnish to the U.S. Government without restriction on disclosure and use.

Data Subject to Export Control:

Technical data, whether or not specifically identified or marked, that is subject to the export laws and regulations of the United States and that is provided to SkyCorp under this agreement will be treated as such, and will not be further provided to any foreign persons without proper U.S. Government authorization, where required.

Patent Indemnification:

In the event the U.S. Government incurs any liability for the practice of inventions or works covered by privately owned U.S. patent or copyrights, either as royalties owed under existing U.S. Government license or as an unlicensed practice of such patent or copyright (infringement), and such liability is incurred as a result of NASA performing its responsibilities under this agreement or as a result of SkyCorp's or its contractors performance of SkyCorp's responsibilities under this agreement, SkyCorp agrees to indemnify and hold the U.S. Government harmless against such liability, including infringement costs and reimbursement for expenses incurred by the U.S. Government in defending against any suit or claim for such royalties or infringements.

11. WARRANTY

NASA does not warrant the satellite (manufactured or otherwise), or the derived information's availability or suitability, for any particular use.

12. ASSIGNMENT AND CONTRACTING

Neither this Agreement nor any interest arising under it may be assigned by SkyCorp. SkyCorp shall notify NASA in writing, at least two months prior to launch, of the identity of all entities participating in developing the materials or apparatus to be flown on the Shuttle flight provided under this Agreement, or who otherwise share in the payloads or product or services provided under this Agreement. The participation of any foreign entity in the activities under this Agreement, including participation of foreign entities as subcontractors, shall be subject to prior approval of the NASA's Associate Administrator for Space Flight in coordination with NASA's Associate Administrator for External Relations.

13. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature and shall remain in effect until the completion of all obligations of the both parties hereto, or 12 months from the date of signature of both parties, whichever comes last.

14. RIGHT TO TERMINATE

Either party may, for any reason, unilaterally terminate this Agreement, without liability, prior to the expiration date by providing thirty (30) days written notice to the other party. In the event of such termination, NASA shall make a reasonable effort to return SkyCorp any hardware furnished by it in performance of this Agreement.

15. KEY PERSONNEL

The following personnel are designated as the key officials for their respective party. These key officials are the principal points of contact between the parties in the performance of this Agreement.

NASA

Mr. Tommy Holloway
International Space Station Program
Manager
Code OA
Johnson Space Center
Phone: (281) 483-5433
Fax: (281) 483-2968
e-mail: patricia.h.leblanc1 @jsc.nasa.gov

SkyCorp

Mr. Dennis Wingo
President
SkyCorp
603 Dement Street NE
Huntsville, AL 35801
Phone: (256) 533-9967
Fax: (256) 533-9969
e-mail: wingod@earthlink.net

16. MODIFICATION TO THIS AGREEMENT

Any modification to this Agreement shall be executed in writing and signed by the signatories to this Agreement or their designees.

17. ASSIGNMENT OF RIGHTS

Neither this agreement nor any interest arising under it will be assigned by SkyCorp or NASA without the express written consent of the officials executing the Agreement.

18. APPLICABLE LAW

U.S. Federal law governs this agreement for all purposes including, but not limited to, determining the validity of the agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

19. ANTI-DEFICIENCY ACT

All activities under or pursuant to this Agreement are subject to the availability of appropriated funds, and no provision shall be interpreted to require obligations or provision of funds in violation of the Anti-deficiency Act, 31 U.S.C. § 1341.

20. SIGNATORY AUTHORITY

The signatures below are by persons with authority to bind the Parties.

NASA

SkyCorp Incorporated

Tommy Holloway
ISS Program Manager
Johnson Space Center
Houston, TX 77058

Dennis Wingo
President

Date: _____

Date: _____